

Appl. No. 10/727,794**Attny Docket No. 3539****Amendment and Response to Second Office Action****REMARKS**

All claims remain pending in the application. No claim has been amended in response to the Office Action of January 9, 2008. Claims 1-21 have been rejected under 35 U.S.C. §103(a) as obvious from the combination of the Bernstein and Holm et al. references. Reconsideration of the amended application is requested.

I. Claim Rejections Under 35 U.S.C. 103(a)

The Examiner contends that Bernstein teaches a plurality of CENV¹ payment times in parts 8 and 9 of the Bernstein reference. Applicant respectfully disagrees. First, Bernstein's part 9 has nothing to do with the CENV defense, but instead discusses the OCB defense. Further, there is no mention at all in Bernstein part 8 of any CENV payment time. At best, Bernstein mentions that "the defense further requires that the exchange was, in fact, contemporaneous." Bernstein does not teach or suggest the idea of performing any step involving a single CENV payment time or multiple CENV payment times. Instead it teaches that the recipient of a preference payment consult prior case law on the topic of CENV. This teaches away from Applicant's invention.

In addition, the Examiner appears to refer to the same teaching in Bernstein to satisfy two different claim elements: 1) calculating a payment time for each of said preference payments; and 2) selecting a CENV payment time. To be clear, a payment time for a preference payment is not the same thing as a CENV payment time (although it is possible for each term to have the same numeric value). Applicant respectfully requests that the Examiner either withdraw this grounds for rejection

¹ Contemporaneous Exchange for New Value.

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or specify which passage in Bernstein part 8 discloses calculating a payment time for each of said preference payments, which passage in Bernstein part 8 discloses selecting one or more CENV payment times, and which passage teaches the comparison.

Since Bernstein does not disclose selecting one or more CENV payment times, Applicant contends that claims 1-7, 17, 18 and 20 are in condition for allowance.

The Examiner contends that Bernstein teaches a plurality of OCB² protected ranges in parts 8 and 9 of the Bernstein reference. Applicant respectfully disagrees. First, Bernstein's part 8 has nothing to do with the OCB defense, but instead discusses the CENV defense. Further, there is no mention at all in Bernstein part 9 of any OCB protected range. The idea of an OCB protected range, much less multiple OCB protected ranges, is entirely missing from the Bernstein reference. Applicant respectfully contends that only impermissible hindsight analysis would permit a reading of Bernstein that finds a teaching of one or more OCB protected ranges.

Bernstein also fails to disclose or teach separate claim elements such as a day spread and assumed payment time. These terms are clearly defined in Applicant's written description and not present in Bernstein. Even if they were present, the claims require a combination that is also not taught or disclosed by Bernstein. For example, claim 8 requires the step of calculating an OCB protected range as a function of an assumed payment time and a day spread. Applicant respectfully requests that the Examiner either withdraw this grounds for rejection or specify which passage in Bernstein discloses the algorithm.

² Ordinary Course of Business

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Further, Bernstein does not disclose or teach either a need, a motivation or a procedure for iterative calculation as embodied in the "repeating" step of Applicant's claims. At best, Bernstein examines a single application of the CENV or OCB defense to a single preference payment and does not contemplate or explain any need for repeating the analysis by applying different criteria to the same preference payment under the same defense. Therefore the repeating step of claims 2, 4, 6, 7, 9, 11, 13, 14, and 21 is not present in Bernstein.

For at least the reasons that Bernstein does not disclose: 1) the OCB protected range; 2) an algorithm for calculating the OCB protected range from an assumed payment time and a day spread; and 3) a procedure or a need for iterative calculation, Applicant contends that claims 2, 4, and 6-21 are in condition for allowance.

Claims 15-21 are directed to methods that combine two or more of the preference payment defenses through various combinations of steps. Applicant has reviewed the passages of Bernstein cited by the Examiner and cannot find any disclosure or teaching of any combination much less the specific combinations claimed by the Applicant. Applicant respectfully contends that only impermissible hindsight analysis would permit a reading of Bernstein that finds a teaching of the combinations of the OCB, SNV and CENV defense calculations as claimed.

For at least the reason that Bernstein does not disclose or teach the combination of calculating steps for two or more preference payment defenses, Applicant contends that claims 15-21 are in condition for allowance.

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V. Conclusion

For the reasons stated above, Applicant believes that all pending claims are in condition for allowance. In view of the foregoing remarks, the Applicant respectfully requests reconsideration and allowance of the pending claims.

Respectfully submitted,

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